

H.R. 669

To enhance competition in the financial services sector, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 1997

Mr. BAKER (for himself, Mr. McCOLLUM, Mr. DREIER, Mr. LaFALCE, and Mr. FLAKE) introduced the following bill; which was referred to the Committee on Banking and Financial Services, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To enhance competition in the financial services sector, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the “Depository
5 Institution Affiliation Act”.

6 FINDINGS AND PURPOSE

7 SEC. 2. (a) The Congress hereby finds that—

1 (1) current laws and regulations restrain effi-
2 ciency, competition and innovation in the design and
3 delivery of financial services to the disadvantage of
4 consumers;

5 (2) restrictions on ownership of depository insti-
6 tutions and affiliations with other business organiza-
7 tions interferes with their ability to attract and re-
8 tain capital and managerial resources;

9 (3) the vulnerability of the financial system and
10 its discrete components is increased and effective
11 monitoring, supervision and coordination of actions
12 during periods of stress is impeded by fragmented
13 and disparate regulation; and

14 (4) current laws inhibit the ability of domestic
15 financial markets and intermediaries to respond to
16 the serious competitive challenges presented by for-
17 eign intermediaries and the globalization of markets.

18 (b) It is the purpose of this act to promote the safety
19 and soundness of the Nation's financial system, enhance
20 the quality of regulation and supervision of financial
21 intermediaries and achieve a more efficient market and
22 effective regulatory structure by—

23 (1) establishing an alternative and comprehen-
24 sive legislative framework for the creation and regu-
25 lation of depository institution holding companies;

1 (2) increasing the capital adequacy of commer-
2 cial banks, brokers and dealers, and savings and
3 loan associations and other financial companies by
4 eliminating restrictions on common ownership and
5 affiliation within a depository institution holding
6 company;

7 (3) permitting affiliates to engage in any activ-
8 ity subject to functional and equal regulation by the
9 appropriate State or Federal regulator;

10 (4) insulating and protecting insured depository
11 institutions through higher capital requirements, ex-
12 panded restrictions on relationship with affiliates,
13 broader examination and enforcement authority and
14 increased civil and criminal penalties;

15 (5) permitting the efficient marketing and dis-
16 tribution of financial services to consumers subject
17 to safeguards against coercive tie-ins and other un-
18 fair and abusive practices; and

19 (6) establishing the National Financial Services
20 Committee to oversee the evolution and supervision
21 of the financial services industry and to report to
22 Congress.

1 TITLE I—CREATION AND CONTROL OF DEPOSI-
2 TORY INSTITUTION HOLDING COMPANIES

3 SEC. 101. (a) DEFINITIONS.—For the purposes of
4 this Act:

5 (1) The term “depository institution holding
6 company” means a company that—

7 (A) has filed with the National Financial
8 Services Committee a notice stating such com-
9 pany’s intent to comply with the requirements
10 of this section and has not withdrawn such no-
11 tice; and

12 (B) controls an insured depository institu-
13 tion, or either (i) has, within the preceding
14 twelve months, filed a notice under subsection
15 (b) of this section to acquire control of an in-
16 sured depository institution, a bank holding
17 company, a savings and loan holding company
18 or a depository institution holding company,
19 which notice has not been disapproved, or (ii)
20 controls a company which has, within the pre-
21 ceding twelve months, filed an application for
22 deposit insurance under section 4 or 5 of the
23 Federal Deposit Insurance Act (12 U.S.C.
24 1814, 1815) which has not been disapproved.

1 The filing of the notice described in subpara-
2 graph (A) of this paragraph by a bank holding
3 company that does not control any banks as de-
4 fined in section 2(c)(1)(B) of the Bank Holding
5 Company Act (12 U.S.C. 1814(c)(1)(B)) which
6 are not insured depository institutions shall in
7 immediate termination of the status of such
8 company as a bank holding company, and the
9 filing of the notice described in subparagraph
10 (A) of this paragraph by a savings and loan
11 holding company shall result in the immediate
12 termination of the status of such company as a
13 savings and loan holding company.

14 (2) The term “bank holding company” has the
15 meaning given to it in section 2(a) of the Bank
16 Holding Company Act of 1956, as amended (12
17 U.S.C. 1841(a)).

18 (3) The term “savings and loan holding com-
19 pany” has the meaning given to it in section 10(a)
20 of the Home Owners’ Loan Act of 1933 (12 U.S.C.
21 1467a(a)).

22 (4) Except as provided in paragraph 5 of sub-
23 section (f) of this section, the term “affiliate” of a
24 company means any other company which controls,

1 is controlled by, or is under common control with
2 such company.

3 (5) The term “appropriate Federal banking
4 agency” has the meaning given to it in section 3 of
5 the Federal Deposit Insurance Act (12 U.S.C. 1813
6 (q)).

7 (6) The term “insured depository institution”
8 has the meaning given to it in section 3(c)(2) of the
9 Federal Deposit Insurance Act (12 U.S.C.
10 1813(C)(2)).

11 (7) The term “State” has the meaning given to
12 it in section 3(a) of the Federal Deposit Insurance
13 Act (12 U.S.C. 1813(a)).

14 (8) The term “company” means any corpora-
15 tion, partnership, business trust, association, or
16 similar organization, or any other trust unless by its
17 terms it must terminate within twenty-five years or
18 not later than twenty-one years and ten months
19 after the death of individuals living on the effective
20 date of the trust, but shall not include any corpora-
21 tion the majority of the shares of which are owned
22 by the United States or by any State.

23 (9)(A) The term “control” means the power, di-
24 rectly or indirectly, to direct the management or

1 policies of a company, or to vote 25 per centum or
2 more of any class of voting securities of a company.

3 (B) No company shall be deemed to control or
4 to have acquired control of any other company by
5 virtue of its ownership of the voting securities of
6 such other company—

7 (i) acquired or held in any agency, trust or
8 other fiduciary capacity;

9 (ii)(a) acquired or held in connection with
10 or incidental to the underwriting of securities if
11 such securities are held only for such period of
12 time as will permit the sale thereof on a reason-
13 able basis; or

14 (b) acquired or held in connection with or
15 incidental to market making, dealing, trading,
16 brokerage or other securities related activities
17 and not with a view to acquiring, exercising or
18 transferring any control over the management
19 or policies of such company; or

20 (iii) acquired in securing or collecting a
21 debt previously contracted in good faith, until
22 two years after the date of acquisition or for
23 such additional period of time as the appro-
24 priate Federal banking agency may permit.

1 (C) No company formed for the sole purpose of
2 participating in a proxy solicitation is in control of
3 a company by virtue of its acquisition of voting
4 rights with respect to shares of such company ac-
5 quired in the course of such solicitation.

6 (10) The term “adequately capitalized with re-
7 spect to an insured depository institution has the
8 meaning given to it in section 38(b)(1) of the Fed-
9 eral Deposit Insurance Act (12 U.S.C.
10 1831o(b)(1)(B).

11 (11) The term “well capitalized” has the mean-
12 ing given to it in section 38(b)(1)(A) of the Federal
13 Deposit Insurance Act (12 U.S.C. 1831o(b)(1)(A)).

14 (12) The term “minimum required capital”
15 with respect to an insured depository institution
16 means the amount of capital that is required for it
17 to be adequately capitalized.

18 (b) CHANGES IN CONTROL OF INSURED BANKS AND
19 INSURED INSTITUTIONS.—No depository institution hold-
20 ing company acting directly or indirectly, or through or
21 in concert with one or more other persons, shall acquire
22 control of an insured depository institution, a bank hold-
23 ing company, a savings and loan holding company or a
24 depository institution holding company not controlled by

1 such company on the date it became a depository institu-
2 tion holding company, if such acquisition and control oc-
3 curs through a purchase, assignment, transfer, pledge or
4 other disposition of voting stock of such insured depository
5 institution, bank holding company, savings and loan hold-
6 ing company or depository institution holding company
7 unless the depository institution holding company has
8 complied with the requirements of section 7(j) of the Fed-
9 eral Deposit Insurance Act (12 U.S.C. 1817(j)). Any fail-
10 ure to comply with the preceding requirements shall sub-
11 ject the relevant depository institution holding company
12 to the penalties and other procedures provided in sub-
13 sections (i) through (m) of this section, in addition to oth-
14 erwise applicable penalties.

15 (c) AFFILIATE TRANSACTIONS.—(1) The appropriate
16 Federal agency may—

17 (A) upon a finding of probable harm that can-
18 not adequately be prevented by less burdensome
19 rules and regulations, adopt such rules and regula-
20 tions, consistent with the purposes of this Act, as
21 may be necessary in order to prevent an insured de-
22 pository institution that is controlled by a depository
23 institution holding company from engaging in unsafe

1 or unsound practices that involve the depository in-
2 stitution holding company or any of its affiliates in-
3 cluding, without limitation, unsafe or unsound prac-
4 tices that involve covered transactions as defined in
5 section 23A of the Federal Reserve Act (12 U.S.C.
6 371c) and any transactions described in paragraph
7 (2) of subsection (a) of section 23B of the Federal
8 Reserve Act (12 U.S.C. 373c-1); and

9 (B) by rule, regulation or order, exempt any in-
10 sured depository institution that is controlled by a
11 depository institution holding company or class of
12 such banks or institutions, or any transaction or
13 class of transactions, from any requirement under
14 the preceding subparagraph or under sections 23A
15 or 23B of the Federal Reserve Act (12 U.S.C. 371c,
16 371c-1), notwithstanding the provisions of any
17 other law, rule, regulation or order, if the appro-
18 priate Federal banking agency deems such an ex-
19 emption to be reasonable and not inconsistent with
20 the purposes of this Act and in the public interest.

21 (2) Any rule or regulation adopted pursuant to sub-
22 paragraph (A) of paragraph (1) of this subsection shall

1 be adopted in accordance with section 4 of the Administra-
2 tive Procedure Act (5 U.S.C. 553), except that the appro-
3 priate Federal banking agency shall give interested per-
4 sons an opportunity for oral presentations of data, views,
5 and arguments, in addition to written submissions.

6 (3) Any transaction that was approved by a Federal
7 regulatory agency prior to the enactment of this Act shall
8 be exempt from any rules or regulations adopted pursuant
9 to subparagraph (A) of paragraph (1) of this subsection.

10 (4) Subject to subparagraph (B) of paragraph (1) of
11 this subsection, the provisions of sections 23A and 23B
12 of the Federal Reserve Act (12 U.S.C. 371c, 371c–1) shall
13 be applicable to every insured depository institution con-
14 trolled by a depository institution holding company in the
15 same manner and to the extent as if such insured deposi-
16 tory institution were a member bank, and for this purpose,
17 any company which would be an affiliate of an insured
18 depository institution for purposes of such sections 23A
19 and 23B if such insured depository institution were a
20 member bank shall be deemed to be an affiliate of such
21 insured depository institution.

22 (5) No insured depository institution that is an affili-
23 ate of a depository institution holding company shall, di-
24 rectly or indirectly—

1 (A) extend credit in any manner to a securities
2 affiliate or a subsidiary thereof;

3 (B) purchase for its own account assets of a se-
4 curities affiliate or a subsidiary thereof;

5 (C) issue a guarantee, acceptance, or letter of
6 credit, including an endorsement or standby letter of
7 credit, for the benefit of a securities affiliate or a
8 subsidiary thereof; or

9 (D) extend credit in any manner to any invest-
10 ment company advised by or the shares of which are
11 distributed by a securities affiliate.

12 (6) Subparagraphs (A) and (B) of paragraph (5) do
13 not apply to any extension of credit by an insured deposi-
14 tory institution made to acquire or sell any securities of
15 the United States if—

16 (A) the extension of credit is to be repaid on
17 the same calendar day;

18 (B) the extension of credit is incidental to the
19 clearing of transactions in those securities through
20 that insured depository institution; and

21 (C) both the principal of and the interest on the
22 extension of credit are fully secured by securities of
23 the United States.

1 (7) No insured depository institution that is an affili-
2 ate of a depository institution holding company shall di-
3 rectly or indirectly extend credit, or issue or enter into
4 a standby letter of credit, asset purchase agreement, in-
5 demnity, guarantee, insurance, or other facility, for the
6 purpose of enhancing the marketability of a securities
7 issue underwritten or distributed by a securities affiliate.

8 (8) No insured depository institution that is an affili-
9 ate of a depository institution holding company shall
10 knowingly extend or arrange for the extension of credit,
11 directly or indirectly, secured by or for the purpose of pur-
12 chasing any security while, or for thirty days after, that
13 security is the subject of a distribution in which a securi-
14 ties affiliate of that insured depository institution partici-
15 pates as an underwriter or a member of a selling group.

16 (9) No depository institution that is an affiliate of
17 a depository institution holding company shall, directly or
18 indirectly, extend credit to an issuer of securities under-
19 written by a securities affiliate for the purpose of paying
20 the principal of those securities or interest for dividends
21 on those securities.

22 (10) For the purpose of paragraphs (5), (6), (7), (8),
23 and (9) of this section, a “securities affiliate” means a
24 company that engages in underwriting, distributing or
25 dealing in securities of any type, except that such term

1 shall not include insurance products deemed to be securi-
2 ties, including and without limitation variable annuities
3 and variable life insurance.

4 (d) CAPITALIZATION.—(1) Each insured depository
5 institution that is controlled by a depository institution
6 holding company shall be well capitalized.

7 (2) In the event of a finding by the appropriate Fed-
8 eral banking agency that an insured depository institution
9 controlled by a depository institution holding company is
10 not well capitalized, the depository institution holding
11 company shall (i) execute an agreement with the appro-
12 priate Federal banking agency within thirty days to return
13 the insured depository institution within a reasonable pe-
14 riod of time to being well capitalized or (ii) divest control
15 of the insured bank or insured institution in an orderly
16 manner within one hundred and eighty days or such addi-
17 tional period of time as the appropriate Federal banking
18 agency may determine is reasonably required in order to
19 effect such divestiture.

20 (3) The appropriate Federal banking agency may not
21 impose by regulation, order, agreement or any other
22 means any requirement pertaining to the capital of a de-
23 pository institution holding company.

24 (e) INTERSTATE ACQUISITIONS AND ACTIVITIES OF
25 INSURED DEPOSITORY INSTITUTIONS.—(1) No depository

1 institution holding company may acquire control of an ad-
2 ditional insured bank (as such term is defined in section
3 2(c) of the Bank Holding Company Act of 1956, as
4 amended (12 U.S.C. 1841(c)), if the acquisition could not
5 be approved by the Board of Governors of the Federal Re-
6 serve System under section 3(d)(1)(B), 3(d)(1)(C),
7 3(d)(1)(D), 3(d)(2), 3(d)(3), 3(d)(4), or 3(d)(5) of the
8 Bank Holding Company Act of 1956, as amended (12
9 U.S.C. 1842(d)) were such acquisition made by a bank
10 holding company except as otherwise authorized pursuant
11 to 13(f) of the Federal Deposit Insurance Act (12 U.S.C.
12 1823(f)).

13 (2) A depository institution holding company shall be
14 treated as a bank holding company, and any insured de-
15 pository institution affiliate of a depository institution
16 holding company shall be treated as a bank subsidiary for
17 purposes of section 18(r) of the Federal Deposit Insurance
18 Act (12 U.S.C. 1828(r)).

19 (3) No depository institution holding company may
20 acquire control of an additional savings association if the
21 acquisition would be in violation of section 10(e)(3) of the
22 Home Owners' Loan Act of 1933 (12 U.S.C. 1467a(e)(3))
23 were such acquisition made by a savings and loan holding

1 company, except as otherwise authorized pursuant to sec-
2 tion 13(k) of the Federal Deposit Insurance Act (12
3 U.S.C. 1823(k)).

4 (f) DIFFERENTIAL TREATMENT PROHIBITION; LAWS
5 INCONSISTENT WITH THIS ACT.—(1) Notwithstanding
6 any other Federal law, no State, and no Federal or State
7 regulatory agency, including the appropriate Federal
8 banking agency, may act by law, rule, regulation, order,
9 or otherwise if the effect of such action would be to dif-
10 ferentiate insured depository institutions controlled by de-
11 pository institution holding companies from any other in-
12 sured depository institutions in a manner adverse to in-
13 sured depository institutions controlled by depository insti-
14 tution holding companies, or to differentiate depository in-
15 stitution holding companies or their affiliates from bank
16 holding companies or savings and loan holding companies
17 and their affiliates in a manner adverse to depository insti-
18 tution holding companies or their affiliates, except to the
19 extent that the appropriate Federal banking agency may
20 act to implement this Act as authorized herein.

21 (2)(A) FINDINGS AND PURPOSE.—The Congress
22 hereby finds that certain State laws and regulations have
23 the purpose or effect of preventing insured depository in-
24 stitutions from being or becoming affiliate with, companies

1 or persons engaged in nonbanking activities. Such laws re-
2 strain legitimate competition in interstate commerce and
3 deny consumers freedom of choice in selecting financial
4 services. Such restrictions also threaten the long-term
5 safety and soundness of insured depository institutions by
6 denying them access to capital. Given the preponderant
7 Federal interest in ensuring competition in national mar-
8 kets for financial services and in ensuring the safety and
9 soundness of the federally insured banking and thrift in-
10 dustries, Congress hereby finds that it is necessary to pre-
11 empt such anticompetitive State laws and regulations to
12 the extent necessary to permit the formation and efficient
13 operation of depository institution holding companies.
14 However, the Congress also recognizes that there is a le-
15 gitimate and traditional State interest in ensuring that
16 State banks and other companies are operated in a safe
17 and sound manner to serve the interests of the public and
18 consumers. The preemption provided in the following
19 paragraph (B) is thus not intended to preempt State laws
20 that concern the regulation, supervision, and examination
21 of State chartered entities, and that are not inconsistent
22 with the purposes of this Act.

23 (B) PREEMPTION.—Any provision of Federal or
24 State law, rule, regulation or order that is expressly or
25 impliedly inconsistent with the provisions and purposes of

1 this section is hereby preempted, including, without limita-
2 tion, State banking, savings and loan, insurance, real es-
3 tate, securities, finance company, retail or other laws
4 which (i) have the purpose or effect of preventing or im-
5 peding insured depository institutions or affiliates, agents,
6 principals, brokers, directors, officers, employees or other
7 representatives of such institutions or affiliates thereof
8 from being owned or controlled by or from being affiliated
9 in any way with a depository institution holding company
10 or any affiliate thereof as a result of the types of non-
11 banking activities engaged in directly or indirectly by such
12 company or any affiliate thereof or by any agent, prin-
13 cipal, solicitor, broker, director, officer, employee or other
14 representative of such company or affiliate thereof or (ii)
15 have the purpose or effect of preventing insured banks or
16 insured institutions or affiliates, agents, principals, bro-
17 kers, directors, officers, employees or other representatives
18 of such institutions or affiliates thereof from offering or
19 marketing products or services of their affiliated deposi-
20 tory institution holding company or any affiliate thereof
21 or from having their products or services offered or mar-
22 keted by their affiliated depository institution holding
23 company or any affiliate thereof, or by any agent, prin-
24 cipal, broker, director, officer, employee or other rep-
25 resentatives of such company or affiliate thereof.

1 (3) No State or State regulatory agency may act by
2 law, rule, regulation or order if the effect of such action
3 would be to impede or prevent an insured bank or insured
4 institution that is located in another State from qualifying
5 to maintain or defend in court any action which could be
6 maintained or defended under similar circumstances by a
7 company that is located in such other State and that is
8 not an insured depository institution, provided that the in-
9 sured depository institution does not establish or operate
10 in any State so acting or in the State of any State regu-
11 latory agency so acting as a “domestic branch”, as defined
12 in section 3(o)); except that, where the maintenance or
13 defense of such an action by a company that is located
14 in such other State and that is not an insured depository
15 institution is subject to certain conditions, the mainte-
16 nance or defense of such an action by an insured deposi-
17 tory institution located in such other State may be subject
18 to those same conditions, so long as such conditions are
19 applied in a nondiscriminatory manner to fulfill legitimate
20 State objectives and do not have the effect, directly or in-
21 directly, of denying insured depository institutions located
22 in other States the opportunity to maintain or defend such
23 actions.

1 (4) Except for licensing, marketing, compensation,
2 employment or other requirements applied in a non-
3 discriminatory manner to fulfill legitimate State regu-
4 latory objectives which are not inconsistent with the pur-
5 poses of this Act as set forth in section 2 hereof, no State
6 may through legislative, administrative, executive or judi-
7 cial action impede or prevent a depository institution hold-
8 ing company or affiliate thereof from utilizing or com-
9 pensating any agent, solicitor, broker, employee or other
10 person located in that State and representing in any lawful
11 capacity any insured depository institution or any such de-
12 pository institution holding company or such affiliate
13 thereof, provided that, where any such person is being uti-
14 lized or compensated for the performance of activities on
15 behalf of an insured depository institution, such activities
16 do not result in the establishment or operation by the in-
17 sured depository institution of a “domestic branch,” as de-
18 fined in section 3(o) of the Federal Deposit Insurance Act
19 (12 U.S.C. 1813(a)), at any location other than the main
20 or branch offices of such depository institution.

21 (5) As used in paragraphs (2) through (4) of this
22 subsection only, the term “affiliate” means a person that
23 directly or indirectly controls or is controlled by, or is
24 under common control with the person specified; and the
25 term “control,” including the terms “controlled by” and

1 “under common control with”, means the power, directly
2 or indirectly, to direct the management or policies of a
3 person and shall be presumed to exist if any person, di-
4 rectly or indirectly, owns, controls, or holds with power
5 to vote ten per centum or more of the voting securities
6 of any other person.

7 (g) SECURITIES, INSURANCE AND REAL ESTATE AC-
8 TIVITIES OF INSURED BANKS AND INSURED INSTITU-
9 TIONS.—(1) No insured depository institution that is an
10 affiliate of a depository institution holding company shall
11 directly engage in—

12 (A) dealing in or underwriting securities, or
13 purchasing or selling securities as agent, except to
14 the extent that such activities are performed only
15 with regard to obligations of the United States or
16 would be authorized for a national bank under sec-
17 tion 92a of title 12, United States Code;

18 (B) insurance underwriting; or

19 (C) real estate investment or development, ex-
20 cept to the extent that such activities are performed
21 in relation to the premises of the insured depository
22 institution or in connection with securing or collect-
23 ing a debt previously contracted in good faith, or
24 would be authorized for a national bank under sec-
25 tion 92a of title 12, United States Code.

1 (2) Nothing contained in this subsection shall be con-
2 strued (A) to prohibit or impede a depository institution
3 holding company or any affiliate of a depository institution
4 holding company other than an insured depository institu-
5 tion from engaging in any of the activities set forth in
6 paragraph (1), or (B) to prohibit or impede any employee
7 of an insured depository institution that is an affiliate of
8 a depository institution holding company from promoting
9 or advertising products or services of an affiliate of such
10 insured depository institution that engages in any of such
11 activities.

12 (3) No bank holding company which becomes a de-
13 pository institution holding company and no depository in-
14 stitution holding company which did not at any time prior
15 to becoming such a holding company directly or indirectly
16 engage in insurance agency or real estate brokerage activi-
17 ties shall commence any insurance agency or real estate
18 brokerage activities not permissible for bank holding com-
19 panies under section 4(C)(8) of the Bank Holding Com-
20 pany Act of 1956, as amended (12 U.S.C. 1843(c)(8)),
21 unless such activities shall be conducted through an exist-
22 ing insurance agency or real estate brokerage firm, as the
23 case may be, acquired directly or indirectly by such deposi-
24 tory institution holding company or through any successor

1 to such insurance agency or real estate brokerage, and un-
2 less such acquired insurance agency or real estate broker-
3 age firm shall have been actively engaged in such insur-
4 ance or real estate agency activities during the two-year
5 period preceding the date of enactment of this Act.

6 (4) Nothing in this subsection shall require the
7 breach of any contract entered into prior to enactment of
8 this Act.

9 (h) TYING AND INSIDER LENDING PROVISIONS.—(1)
10 A depository institution holding company shall be treated
11 as a bank holding company for purposes of section 106
12 of the Bank Holding Company Act Amendments of 1970
13 and section 22(h) of the Federal Reserve Act and any reg-
14 ulation prescribed under any such section.

15 (2) A depository institution holding company and any
16 of such company's other affiliates shall be subject to sec-
17 tion 106 of the Bank Holding Company Act Amendments
18 of 1970, in connection with any transaction involving the
19 products or services of such company or affiliate and those
20 of an insured depository institution affiliate, as if such
21 company or any such company's other affiliates were an
22 insured depository institution and such insured depository
23 institution were a subsidiary of a bank holding company.

1 (3) For purposes of this subsection, the appropriate
2 Federal banking agency shall exercise the authority pro-
3 vided to the Board of Governors of the Federal Reserve
4 System in section 106 of the Bank Holding Company Act
5 Amendments of 1970 and section 2(h) of the Federal Re-
6 serve Act.

7 (i) EXAMINATION AND ENFORCEMENT.—(1) The ap-
8 propriate Federal banking agency shall enforce the provi-
9 sions of this section and any regulations adopted under
10 the authority conferred in this section by using its exam-
11 ination and supervisory powers to ensure that each in-
12 sured depository institution under its supervision is in
13 compliance with the limitations of this section.

14 (2) In no instance shall the benefits of Federal de-
15 posit insurance coverage applicable to an insured deposi-
16 tory institution that is controlled by a depository institu-
17 tion holding company be extended to either such deposi-
18 tory institution holding company or to any other company
19 controlled by such depository institution holding company
20 that is not an insured depository institution. Thus the pur-
21 pose of this subsection (c) is to prevent the resources of
22 the Federal deposit insurance funds from being used to

1 protect the shareholders or business interests of a deposi-
2 tory institution holding company, except through the au-
3 thorized fulfillment of their obligations to protect the in-
4 sured deposits of an insured depository institution that is
5 controlled by a depository institution holding company.

6 (3) The appropriate Federal banking agency may ex-
7 amine the books, records and affairs of, or require reports
8 from, any affiliate of an insured depository institution con-
9 trolled by a depository institution holding company in
10 order to ensure compliance with the limitations of this sec-
11 tion.

12 (4) Whenever it appears to the appropriate Federal
13 banking agency that any depository institution holding
14 company is violating, has violated, or is about to violate
15 any provision of this section or any regulation prescribed
16 under this section, such agency may, in its discretion,
17 apply to the appropriate district court of the United States
18 or the United States court of any territory for—

19 (A) a temporary or permanent injunction or re-
20 straining order enjoining such depository institution
21 holding company from violating this section or any
22 regulation prescribed under this section; or

23 (B) such other equitable relief, including dives-
24 titure, as may be necessary to prevent such violation.

1 (5) The district courts of the United States and the
2 United States court in any territory shall have jurisdiction
3 and power to issue any injunction or restraining order or
4 grant any other relief described in paragraph (3). When
5 appropriate, any injunction, order, or other equitable relief
6 granted under this subparagraph shall be granted without
7 requiring the posting of any bond.

8 (6) Whenever it appears to a State or Federal official
9 or agency with supervisory or examination authority over
10 any affiliate of a depository institution holding company
11 that such affiliate of such depository institution holding
12 company is violating, has violated, or is about to violate
13 any provisions of this section or any regulation prescribed
14 under this section, such official or agency shall promptly
15 notify the appropriate Federal regulatory authority in
16 order that the appropriate Federal regulatory authority in
17 consultation with the notifying agency may determine
18 whether action under this subsection is appropriate.

19 (j) DIVESTITURE.—(1) In addition to all its other
20 regulatory and supervisory powers, if the appropriate Fed-
21 eral banking agency determines that an insured depository
22 institution under its supervision has engaged in a continu-
23 ing course of conduct involving its depository institution
24 holding company or any affiliate of such holding company
25 which has had, or has a significant probability of having,

1 the effect of causing such insured depository institution
2 to be in an unsafe or unsound condition, it may make an
3 initial finding that the depository institution holding com-
4 pany should be required to terminate its control of the
5 insured depository institution. If the appropriate Federal
6 banking agency makes such an initial finding, it shall
7 within three days so notify the depository institution hold-
8 ing company controlling the insured depository institution
9 and the National Financial Services Committee. Such no-
10 tice shall provide a statement for the basis of the appro-
11 priate Federal banking agency's action.

12 (2) Within thirty days of the receipt of the notice de-
13 scribed in the preceding paragraph, the depository institu-
14 tion holding company receiving such notice may request
15 an agency hearing before the appropriate Federal banking
16 agency. In such hearing all issues shall be determined pur-
17 suant to section 5 of the Administrative Procedure Act
18 (5 U.S.C. 554). The length of the hearing shall be deter-
19 mined by the appropriate Federal banking agency, and
20 such hearing may be before a hearing examiner appointed
21 by such agency. At the conclusion thereof, the appropriate
22 Federal banking agency shall issue a final order, on the
23 basis of the record made at such hearing, affirming or re-
24 versing the initial finding of the appropriate Federal bank-
25 ing agency. A company that fails to request an agency

1 hearing under this paragraph shall be deemed to have con-
2 sented to the issuance of a final order affirming the initial
3 finding without the necessity of the hearing provided for
4 in this paragraph.

5 (3) If such final order affirms the initial finding, the
6 depository institution holding company shall, upon comple-
7 tion of the judicial review, if any, of the appropriate Fed-
8 eral banking agency's final order as provided for in sub-
9 section (m), terminate its control of the insured depository
10 institution involved within one year.

11 (k) CRIMINAL PENALTIES.—(1) Any company or in-
12 sured depository institution which knowingly and willfully
13 violates or knowingly and willfully participates in a viola-
14 tion of any provision of this section, or any rule, regulation
15 or order issued by an appropriate Federal banking agency
16 pursuant thereto, shall upon conviction be fined for each
17 violation not more than the greater of \$250,000 or an
18 amount equal to one one-hundredth of 1 per centum of
19 the minimum required capital of the relevant insured de-
20 pository institution for each day during which the violation
21 continues, except that in no case shall any such amount
22 for any violation or related series of violations exceed 1
23 per centum of the minimum required capital of the rel-
24 evant insured depository institution.

1 (2) Any officer, director, employee or agent of any
2 company, insured depository institution and any other
3 natural person who knowingly and willfully participates in
4 a violation of any provision of this section or any rule,
5 regulation, or order issued pursuant thereto, shall upon
6 conviction be imprisoned not less than five years and fined
7 for each violation not more than the greater of \$250,000
8 or double the individual's annual compensation at the time
9 the violation occurred.

10 (3) Every officer, director, employee and agent of a
11 depository institution holding company or insured deposi-
12 tory institution also shall be subject to same penalties for
13 false entries in any book, report, or statement of such
14 company or insured depository institution as are applica-
15 ble to officers, directors, employees and agents of member
16 banks for false entries in any books, reports, or statements
17 of member banks under section 1005 of title 18.

18 (4) A depository institution holding company and its
19 affiliates shall be subject to the provisions of title 10, as
20 amended by the subtitle F of title IX of the Financial In-
21 stitutions Reform, Recovery and Enforcement Act of 1989
22 (Public Law) and the Comprehensive Thrift and
23 Bank Fraud Prosecution and Taxpayer Recovery Act of

1 (1990 Public Law) to the same extent as a reg-
 2 istered bank holding company or savings and loan holding
 3 company or any affiliate of such a company.

4 (l) CIVIL ENFORCEMENT, CEASE-AND-DESIST OR-
 5 DERS, CIVIL MONEY PENALTIES, REMOVAL AND PROHI-
 6 BITION AUTHORITY.—Subsections (b) through (s) and
 7 subsection (u) of section 1818 of title 12 (12 U.S.C. sec-
 8 tion 1818(b)–(s) and (u)) shall apply to any depository
 9 institution holding company, and to any subsidiary (other
 10 than a depository institution) of a depository institution
 11 holding company, in the same manner as they apply to
 12 a State member insured bank. Nothing in subsection (b)
 13 or (c) of section 1818 of title 12 shall authorize any Fed-
 14 eral banking agency, other than the appropriate Federal
 15 banking agency to issue a notice of charges or cease-and-
 16 desist order against a depository institution holding com-
 17 pany or any subsidiary thereof (other than a depository
 18 institution subsidiary of the bank).

19 (1) The appropriate Federal banking agency
 20 shall have authority to assess such a civil money
 21 penalty, after giving notice and an opportunity to
 22 the company or insured depository institution, offi-
 23 cer, director, employee, agent or other natural per-
 24 son to submit data, views, and arguments, and after
 25 giving due consideration to the appropriateness of

1 the penalty with respect to the size of financial re-
2 sources and good faith of the company, insured de-
3 pository institution, or natural person charged, the
4 gravity of the violation, the history of previous viola-
5 tions, and any data, views and arguments submitted.

6 (2) The appropriate Federal banking agency
7 may, in its discretion, compromise, modify, or remit
8 any civil money penalty which is subject to imposi-
9 tion or has been imposed. The appropriate Federal
10 banking agency may collect such civil money penalty
11 by agreement with the company, insured bank or in-
12 sured institution or person, or by bringing an action
13 in the appropriate United States district court, ex-
14 cept that in any such action, the company, insured
15 depository institution or person against whom the
16 penalty has been assessed shall have a right to trial
17 de novo.

18 (m) JUDICIAL REVIEW.—Any part aggrieved by an
19 appropriate Federal banking agency's findings or other ac-
20 tions under this Act may obtain review by the United
21 States court of appeals of the circuit wherein such party
22 has its principal place of business or the United States
23 Court of Appeals for the District of Columbia Circuit, by
24 filing a notice of appeal in such Court within thirty days
25 from the date of such action, and simultaneously sending

1 a copy of such notice by registered or certified mail to
 2 the appropriate Federal banking agency. The appropriate
 3 Federal banking agency shall promptly certify and file in
 4 such Court the record upon which such action or finding
 5 was based. The actions or findings of appropriate Federal
 6 banking agency shall be set aside if not supported by sub-
 7 stantial evidence or if found to violate procedures estab-
 8 lished by this Act. An initial finding by the appropriate
 9 Federal banking agency under subsection (j) of this sec-
 10 tion shall be subject to judicial review only in the context
 11 of review of a final order under paragraph 2 of subsection
 12 (j).

13 AMENDMENTS TO THE BANK HOLDING COMPANY ACT OF
 14 1956

15 SEC. 102. Section 2(c)(2) of the Bank Holding Com-
 16 pany Act of 1956 (12 U.S.C. 1841(c)) is amended by add-
 17 ing the new subparagraph (K) to read as follows:

18 “(K) An insured bank as defined in section
 19 3(h) of the Federal Deposit Insurance Act (12
 20 U.S.C. 1813(h)) that is controlled by no com-
 21 pany other than a depository institution holding
 22 company as defined in the Depository Institu-
 23 tion Affiliation Act.”.

24 AMENDMENTS TO THE FEDERAL RESERVE ACT

25 SEC. 103. Section 23A of the Federal Reserve Act
 26 (12 U.S.C. 371c) is amended by inserting the following

1 at the end of paragraph (a)(2); “*Provided, however, That*
 2 notwithstanding the foregoing, a loan or extension of cred-
 3 it shall not be deemed to be made to an affiliate if (i)
 4 the member bank approves such loan or extension of credit
 5 in accordance with substantially the same standards and
 6 procedures and on substantially the same terms that it
 7 applies to similar loans or extensions of credit the proceeds
 8 of which are not transferred to or for the benefit of an
 9 affiliate, and (ii) such loan or extension of credit is not
 10 made for the purposes of evading any of the requirements
 11 of this section.”.

12 AMENDMENTS TO THE BANKING ACT OF 1933

13 SEC. 104. (a) Section 20 of the Banking Act of 1933
 14 (12 U.S.C. 377) is amended by inserting the following new
 15 paragraph after the first paragraph of such section:

16 “The provisions of this section shall not apply to the
 17 affiliation of any bank that is an affiliate of a depository
 18 institution holding company as defined in the Depository
 19 Institution Affiliation Act with the depository institution
 20 holding company or any other affiliate of the depository
 21 institution holding company.”.

22 (b) Section 32 of the Banking Act of 1933 (12 U.S.C.
 23 78) is amended by inserting the following at the end of
 24 the first paragraph of such section: “The provisions of this
 25 section shall not apply to relationships involving an affili-
 26 ate of a depository institution holding company as defined

1 in the Depository Institution Affiliation Act and either
 2 that depository institution holding company or any other
 3 affiliate of that depository institution holding company.”.

4 AMENDMENTS TO THE FEDERAL DEPOSIT INSURANCE

5 ACT

6 SEC. 105. (a) Section 7(j)(8)(B) of the Federal De-
 7 posit Insurance Act (12 U.S.C. 1817(j)(8)(B)) is amended
 8 to read as follows:

9 “(8)(B) the term ‘control means’ the power, di-
 10 rectly or indirectly, to direct the management or
 11 policies of a company, or to vote 25 per centum or
 12 more of any class of voting securities of a company:
 13 *Provided*, That, no company shall be deemed to con-
 14 trol or to have acquired control of any other com-
 15 pany by virtue of its ownership of the voting securi-
 16 ties of such other company—

17 “(i) acquired or held in an agency, trust or
 18 other fiduciary capacity;

19 “(ii)(I) acquired or held in connection with
 20 or incidental to the underwriting of securities if
 21 such securities are held only for such period of
 22 time as will permit the sale thereof on a reason-
 23 able basis, or

1 “(II) acquired or held in connection with
2 or incidental to market making, dealing, trad-
3 ing, brokerage or other securities related activi-
4 ties and not with a view to acquiring, exercising
5 or transferring any control over the manage-
6 ment or policies of such company; or

7 “(iii) acquired in securing or collecting a
8 debt previously contracted in good faith, until
9 two years after the date of acquisition: *Provided*
10 *further*, That, no company formed for the sole
11 purpose of participating in a proxy solicitation
12 is in control of a company by virtue of its ac-
13 quisition of voting rights with respect to shares
14 of such company acquired in the course of such
15 solicitation.”.

16 (b) A new last sentence shall be added to section
17 7(j)(1) of the Federal Deposit Insurance Act (12 U.S.C.
18 1817(j)(1)), to read as follows: “For the purposes of sub-
19 section (j), the term ‘insured depository institution’ shall
20 include—

21 “(i) any ‘bank holding company’, as that
22 term is defined in section 2 of the Bank Hold-
23 ing Company Act, which has control of any in-
24 sured bank (as defined therein), and the appro-
25 priate Federal banking agency in the case of a

1 bank holding company shall be the Board of
2 Governors of the Federal Reserve System;

3 “(ii) any ‘savings and loan holding com-
4 pany,’ as that term is defined in section 10 of
5 the Home Owners’ Loan Act, which has control
6 of any insured savings association (as defined
7 therein), and the appropriate Federal banking
8 agency, in the case of a savings and loan hold-
9 ing company shall be the Office of Thrift Su-
10 pervision; and

11 “(iii) any ‘depository institution holding
12 company,’ as that term is defined in section
13 101(a)(1) of the Depository Institution Affili-
14 ation Act, which has control of any such in-
15 sured bank, and the appropriate Federal bank-
16 ing agency in the case of a depository institu-
17 tion holding company shall be the appropriate
18 Federal banking agency, as defined in section
19 101(a)(5) of the Depository Institution Affili-
20 ation Act, of such insured bank, or each such
21 agency, if more than one, in the case of a de-
22 pository institution holding company which has
23 control of more than one such insured bank.”.

24 (c) Section 18(j)(1) of the Federal Deposit Insurance
25 Act (12 U.S.C. 1828(j)(1)) is amended—

1 (1) by deleting “The” at the beginning thereof;

2 and

3 (2) by inserting in lieu thereof the following:

4 “Subject to section 101(c)(1)(B) of the Depository
5 Institution Affiliation Act, the”.

6 AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF

7 1934

8 SEC. 106. (a) REGISTRATION OF BROKERS AND
9 DEALERS.—Section 15 of the Securities Exchange Act of
10 1934 is amended by adding at the end thereof the follow-
11 ing new subsection:

12 “(f) The Commission shall not grant registration to
13 any broker or dealer unless such broker or dealer estab-
14 lishes to the satisfaction of the Commission that all re-
15 quirements established by the Depository Institution Af-
16 filiation Act in connection with the activities of such
17 broker or dealer (including any capital adequacy require-
18 ment) have been met.”.

19 (b) REGULATION OF BROKERS AND DEALERS.—(1)
20 Section 15(b)(4) of the Securities Exchange Act of 1934
21 is amended by inserting “the Depository Institution Act,”
22 after “the Commodity Exchange Act,” in subparagraph
23 (D).

1 (2) Section 15(b)(4) of the Securities Exchange Act
2 of 1934 is amended by inserting “the Depository Institu-
3 tion Affiliation Act,” after “the Commodity Exchange
4 Act,” in subparagraph (E).

5 AMENDMENT TO THE HOME OWNERS’ LOAN ACT

6 SEC. 197. Section 11 of the Home Owners’ Loan Act
7 (12 U.S.C. 1468) is amended by deleting the word “Sec-
8 tions” at the beginning of subsection (a)(1) and inserting
9 the following in lieu thereof: “Subject to section
10 101(c)(1)(B) of the Depository Institution Affiliation Act,
11 sections”.

12 AMENDMENT TO THE COMMUNITY REINVESTMENT ACT

13 SEC. 108. Section 3(3) of the Community Reinvest-
14 ment Act (12 U.S.C. 2902(d)) is amended:

15 (1) by inserting “or notice, as appropriate”
16 after “an application” and before “to the appro-
17 priate Federal financial supervisory agency”; and

18 (2) by adding a new paragraph (G) to read as
19 follows:

20 “(G) the acquisition of an insured deposi-
21 tory institution requiring prior notice under sec-
22 tion 101(b) of the Depository Institution Affili-
23 ation Act.”.

1 TITLE II—SUPERVISORY IMPROVEMENTS

2 NATIONAL FINANCIAL SERVICES COMMITTEE

3 SEC. 201. (a) ESTABLISHMENT OF NATIONAL FI-
4 NANCIAL SERVICES OVERSIGHT COMMITTEE.—There is
5 established a National Financial Services Oversight Com-
6 mittee which shall consist of—

7 (1) the Secretary of the Treasury,

8 (2) the Chairman of the Board of Governors of
9 the Federal Reserve System,

10 (3) the Chairman of the Board of Directors of
11 the Federal Deposit Insurance Corporation,

12 (4) the Director of the Office of Thrift Super-
13 vision,

14 (5) the Comptroller of the Currency,

15 (6) the Secretary of Commerce,

16 (7) the Attorney General,

17 (8) the Chairman of the Securities and Ex-
18 change Commission, and

19 (9) the Chairman of the Commodities Futures
20 Trading Commission.

21 For purposes of this Act, the agencies or departments
22 headed by members of the Committee shall be referred to
23 as “member agencies.”

24 (b) CHAIRMAN.—The Chairman of the Committee
25 shall be the Secretary of the Treasury.

1 (c) COMPENSATION.—Each member of the Commit-
2 tee shall serve without additional compensation, but shall
3 be entitled to reasonable expenses incurred in carrying out
4 the official duties as such a member.

5 (d) PUBLIC MEETINGS.—The Committee shall hold
6 public meetings at least annually. All meetings of the
7 Committee shall be conducted in conformity with the pro-
8 visions of section 3(a) of the Government in the Sunshine
9 Act (5 U.S.C. 552b). The Committee may not take any
10 action unless such action is approved by a vote of two-
11 thirds of the members of the Committee.

12 (e) SECRETARIAT.—The Department of the Treasury
13 shall provide the Secretariat for the Committee and shall
14 assume any expenses arising for execution of the respon-
15 sibilities of the Committee.

16 (f) ACCESS TO RECORDS.—For the purpose of carry-
17 ing out this section, the Committee shall have access to
18 all books, accounts, records, reports, files, memoranda, pa-
19 pers, things and property belonging to or in use by any
20 appropriate Federal banking agency.

21 (g) FUNCTIONS OF THE COMMITTEE.—(1) the Com-
22 mittee shall, insofar as is practicable, establish uniform

1 principles and standards for the examination and super-
2 vision of financial institutions and other providers of fi-
3 nancial services, which shall be applied by the member
4 agencies.

5 (2) The Committee shall make recommendations for
6 uniformity in other supervisory matters, such as, but not
7 limited to, identifying financial institutions and other pro-
8 viders of financial services in need of special supervisory
9 attention, the adequacy of supervisory tools for determin-
10 ing the impact of affiliate operations on insured depository
11 institutions and the ability of the member agencies to dis-
12 cover possible fraud or questionable practices.

13 (3) The Committee shall, from time to time, rec-
14 ommend to the Congress additional measures to strength-
15 en the separation between insured depository institution
16 controlled by depository institutions holding companies
17 from the activities of any of their affiliates including, the
18 imposition of additional restrictions on interaffiliate trans-
19 actions and the strict application of Federal deposit insur-
20 ance coverage only for the benefit of depositors of insured
21 depository institutions that are controlled by a depository
22 institution holding company.

23 (h) CONSULTATION WITH STATE REGULATORS.—
24 The Committee shall consult with the appropriate organi-
25 zations representing the State regulators of banks, savings

1 and loan associations, saving banks, securities firms, in-
2 surance companies, and other providers of financial serv-
3 ices, and as deemed appropriate, meet with such State reg-
4 ulators. The Committee shall invite to each public meeting
5 of the Committee representatives of such organizations.

6 (i) STUDIES AND RECOMMENDATIONS.—The Com-
7 mittee may conduct or authorize studies to carry out the
8 purposes of this Act. On the basis of such studies, the
9 Committee may make recommendations to the Congress
10 and member agencies concerning the implementation of
11 this Act and changes in statutes and regulations necessary
12 to promote the strength and stability of the Nation's fi-
13 nancial system and financial institutions, the competitive-
14 ness of providers of financial services in domestic and
15 international markets and the purposes of this Act. Within
16 one year of the enactment of this Act, the Committee shall
17 report to Congress proposed legislative or regulatory ac-
18 tions that will improve the examination process to permit
19 better oversight of all insured depository institutions. In
20 particular, the Committee shall consider whether the num-
21 ber of or compensation for examiners employed by the ap-
22 propriate Federal regulatory agencies should be increased.

23 TITLE III—EFFECTIVE DATE

24 SEC. 301. This Act shall take effect upon enactment.

